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SUPREME COURT OF THE UNITED STATES

Number 725

FAIRMONT CREAMERY COMPANY,
Plaintiff in Error,

vs.

THE STATE OF MINNESOTA,
Defendant in Error.

REPLY BRIEF ON MOTION.

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This is a criminal case. The opinion and decree of this court did not award costs to plaintiff in error. The clerk entered a judgment for costs assessed at three hundred thirty-three dollars. Such judgment, so far as it included costs, is not authorized by the opinion and decree of the court and is without authority in law.

The motion of defendant in error does not ask the court to modify its opinion or decree, or to grant any relief other than that granted by such

opinion or decree. It asks that the judgment be modified to exclude a matter inserted by the clerk without authority in law and, as defendant in error, believes void.

Most of the cases cited in the brief of plaintiff in error, in opposition to the motion of defendant in error, involved motions or applications asking for relief which went to the merits of the case or involved a modification of the final decree as made by the court thus:

In *Ford v. Potter*, 18 Howard 42, a motion for re-argument was made.

In *Skell v. Dodge*, 107 U. S. 629, the court was asked to change an order of dismissal, with its legal consequences, into an affirmance of the judgment below, with its legal consequences.

In *Reynolds v. Manhattan Trust Company*, 101 Fed. 97, the application was to modify the decree in a mortgage foreclosure proceedings so as to make certain mechanic's lien claims a first lien on the sale proceeds, a bond given for the payment of such claims having been found after the entry of such decree to be worthless.

In *Casey v. Sterling Cider Co.*, 15 Fed. 52, the court was asked to modify its decree of affirmance by adding thereto the words "with interest."

In *Journeman v. East Tennessee Land Co.*, 85 Fed. 251, a petition was made to modify the decree

and mandate so as to award costs in the lower court to complainant.

In *Phillips v. Negley*, 117 U. S. 674, there was involved the power of a court at a subsequent term to set aside and vacate a judgment duly entered and to grant a new trial.

The case of *Brandstreet v. Potter*, 16 Peters, 317, has no application. The court was asked by both parties to a suit to consider and determine certain questions of law not raised by the bill of exceptions, for the sole purpose of assisting the trial court on a retrial of the matter, it being agreed that an order of reversal should be made. The court went no further than to hold that the appellate court would not consider questions of law not properly presented to it by the bill of exceptions.

In *Stanolind Mfg. Co. v. LaRombarde*, 247 Fed. 879, a decree of reversal was entered, the appellants to recover their costs in the appellate court. Costs were taxed by the clerk and the amount thereof duly entered in a judgment. A mandate was issued to the trial court. At a subsequent term complainant petitioned the court to recall the mandate and to modify the judgment by including therein an item for the printing of the transcript of record. At the time the clerk assessed the costs, complainant had not filed a voucher of such item. The judgment was correct so far as the files then existed. There was no unauthorized act on the part of